

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	CASE NO. 05-95149-H1-13
	§	
GEORGE E. COLLINS,	§	CHAPTER 13
	§	
DEBTOR	§	

**AMERICREDIT FINANCIAL SERVICES, INC.'S RESPONSE AND OBJECTION
TO DEBTOR'S EMERGENCY MOTION FOR CONTINUATION OF THE
AUTOMATIC STAY PURSUANT TO 11 U.S.C. SECTION 362(c)(3)(B)**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES AMERICREDIT FINANCIAL SERVICES, INC., a secured creditor, hereinafter called "Americredit", and files this, its Response and Objection to Debtor's Emergency Motion for Continuation of the Automatic Stay Pursuant to 11 U.S.C. Section 362(c)(3)(B) as to all creditors, and would show the Court as follows:

1. Americredit admits Paragraph 1.
2. Americredit admits Paragraph 2.
3. Americredit admits Paragraph 3.
4. Paragraph 4 does not require a response by Americredit.
3. (5). Americredit admits the prior case was dismissed on the Trustee's Motion to Dismiss. Americredit cannot admit or deny what transpired between the Debtor and his attorney.
4. (6). Americredit cannot admit or deny what transpired at the Debtor's 341a meeting. Americredit cannot admit or deny what amendments were not filed or what the Debtor's prior attorney advised him. However, the Motion to Dismiss was filed for non-

payment of pre-confirmation plan payments. The Debtor failed to make the required plan payments.

5. (7). Americredit cannot admit or deny what assurance Debtor had from his prior attorney. Americredit admits the case was dismissed on October 13, 2005.

8. Americredit denies Paragraph 8.

9. Americredit admits that it did not file a Motion for Relief From the Automatic Stay in the prior case.

10. Americredit admits Debtor has requested to extend the Automatic Stay as to all creditors.

11. Americredit admits Paragraph 11.

12. Americredit cannot admit or deny Paragraph 12; it calls for speculation as to what might happen to Debtor if the Automatic Stay is not extended.

13. Americredit cannot admit or deny Paragraph 13; it calls for speculation as to what may occur if the Automatic Stay is not extended.

OBJECTION TO EXTENSION OF AUTOMATIC STAY BEYOND 30 DAYS

Factual Background

1. On or about November 26, 2001, GEORGE E. COLLINS executed a motor vehicle Retail Installment Contract and Security Agreement (hereinafter called "contract") for the purchase of one (1) 1999 Chevrolet Truck Suburban-V8 Utility K1500 LS 4WD, bearing serial number 3GNFK16R8XG260661. Americredit Financial Services, Inc. (hereinafter referred to as "Americredit") holds a perfected security interest in and to said vehicle. Copies of the contract and title are attached hereto as Exhibits 1 and 2. The contract is in

default for the payment due April 24, 2005 of \$591.64 and all subsequent payments. There is now due and owing a balance of \$16,469.52 to Americredit by Debtor plus accrued interest as allowed by the contract.

2. On November 10, 2005, Debtor filed the present petition in bankruptcy under Chapter 13. Americredit believes this case was filed in bad faith, for the purpose of delaying and hindering creditors. This Debtor has filed four bankruptcy cases prior to filing this present case. Because this is the second filing within 12 months, however, the Automatic Stay will lift unless the Court grants Debtor's request for extension of the Stay. Case No. 05-40065 was filed on 6/30/05 and was dismissed on 10/12/05 without a Plan ever having been confirmed or any pre-confirmation payments being made to the Chapter 13 Trustee. The three other prior cases are as follows:

Case No. 00-41142	filed 12/4/00;	dismissed 5/14/01
Case No. 00-34700	filed 5/19/00;	dismissed 11/16/00
Case No. 98-39707	filed 9/17/98;	dismissed 3/22/00

Of these three cases, only one (98-39707) had a confirmed Plan. While these prior filings do not directly relate to 11 U.S.C. §362(c)(3), they do reflect a pattern of behavior on the part of the Debtor in that he has been unable to perform all of his required duties under the Bankruptcy Code, whether it be a failure to file required schedules and/or statements or a failure to make payments to the trustee. In the present case, Debtor's performance has been worse than in any prior case because he has failed to timely file Schedules, Statement of Financial Affairs and a Plan. Such documents were only filed on the eve of the hearing on the Motion to Extend Automatic Stay. In addition, Debtor plead in such Motion that these documents were filed – a clear misrepresentation of the facts. This filing

does not meet the objective or subjective test for good faith as set out in *In re Charles*, No. 05-95071, slip op. (Bankr. S.D. Tex. November 30, 2005).

3. It appears that Debtor only filed the required documents after the Trustee's Response to his Motion which specified that such documents had not been filed. This in itself demonstrates bad faith.

Review of Plan

4. A brief review of the newly-filed Plan reveals a further indication of bad faith and infeasibility. First, the Plan fails to provide for mortgage payments to be paid by the Chapter 13 Trustee. Second, in the proposed Amended Plan filed on 10/7/05 in Case No. 05-40065-H1-13 (the 4th bankruptcy case), Debtor owed taxes to HISD in the sum of \$27,659.95. In the instant case, Debtor lists HISD's claim at \$9,833.22. Third, the prior Amended Plan listed Harris County's claim at \$28,331.72 and at \$16,647.71 in the present Plan. There is a wide discrepancy in the total taxes owed from 10/7/05 to 12/7/05 with no explanation for this reduction. In fact, Debtor's newly-filed Statement of Financial Affairs indicates on Question 3 that there has been no payments to creditors on any debt within the 90 days immediately preceding the present case.

5. Further, Debtor has now lowered the value of Americredit's collateral from the value agreed to in the 4th bankruptcy case of \$11,612.50, as indicated in the Amended Plan dated 10/7/05, to a value of \$10,354.00 in the present case. Debtor should not be allowed to benefit from his demonstrated bad faith.

Credit Counseling

6. To the best of Americredit's information and belief, Debtor has failed to file a certificate of credit counseling.

Schedules I and J – Current Income and Expenditures of Debtor

7. A comparison of Schedule I in the present case with that filed in the immediate prior case, shows Debtor's income has decreased. With respect to Schedule J, it appears Debtors expenses have increased since the prior filing.

8. The Debtor has failed to show any change in circumstances which would indicate he has any likelihood of successfully completing a Chapter 13 Plan. The Debtor's Plan and scheduled debts do not correspond to those reflected in the prior case and are substantially different in the instant case, thus creating a question of which Plan and Schedules are correct, another indication of bad faith.

WHEREFORE PREMISES CONSIDERED AMERICREDIT requests that Debtor's Motion to Extend Automatic Stay be in all things denied and that the Stay not be extended as to Americredit Financial Services, Inc.

Respectfully submitted,

/s/ Billy G. Baca

BILLY G. BACA

State Bar No. 01486800

Attorney in Charge for Respondent

5225 Katy Freeway, Suite 350

Houston, Texas 77007

(713) 864-8000

(713) 864-0179 facsimile

LAWRENCE, BACA & DONOHUE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon the parties listed below, including the Debtor, the Attorney for Debtor, and the Chapter 13 Trustee, and the U. S. Trustee, by electronic mail or first class United States Mail, postage prepaid, this 8th day of December, 2005.

/s/ Billy G. Baca
BILLY G. BACA

Parties Served:

Kelly M. Kowis
Attorney at Law
3555 Timmons Suite 610
Houston TX 77027

George E. Collins
10525 Geulf Meadows Drive
Houston TX 77075

H. Gray Burks, IV
Attorney at Law
9601 Katy Frwy Suite 450
Houston TX 77024

Daniel Emmett O'Connell
Chapter 13 Trustee
P O Box 13
La Porte TX 77572-0013

Office of the U S Trustee
515 Rusk Ave Suite 3516
Houston TX 77002

LAW FORM NO. 355-TX 1/01
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THE REYNOLDS NAMES AND LOGO, REYNOLDS OR RALPH, AS TO CONTENT OR
STRUCTURE ARE TRADEMARKS OF REYNOLDS. CONSULT YOUR LOCAL CREDIT OFFICE.

EXHIBIT

WARNING! The form on the back of this detachable "tab" may only be utilized to notify TxDOT that you have sold the vehicle described on the attached certificate of title. A TITLE IN THE NEW OWNER'S NAME WILL NOT BE ISSUED. To have a new title issued in the new owner's name, the "Assignment of Title" section on the back of the certificate of title must be completed (by seller and buyer), and the new owner must file an application for title in his or her name at the local county tax assessor-collector's office.

AMERICREDIT FINANCIAL SERVICES
PO BOX 9008
FORT WORTH, TX 76147-2008

008156

↓ DETACH HERE ↓

TEXAS CERTIFICATE OF TITLE

ORIGINAL

VEHICLE IDENTIFICATION NUMBER 3GNFK14R8XG260661
YEAR MODEL 1999
MAKE OF VEHICLE CHEV
TITLE/DOCUMENT NUMBER 10137237241135520
DATE TITLE ISSUED 01/04/2002
MODEL K15
MFG. CAPACITY IN TONS 1/2
WEIGHT 5700
LICENSE NUMBER 3TXB16
OWNER STERLING MCCALL TOYOTA HOUSTON TX
ODOMETER READING 20295
REMARK(S)
ACTUAL MILEAGE

GEORGE E COLLINS
10525 GULF MEADOWS DR
HOUSTON, TX 77075

SIGNATURE OF OWNER OR LESSOR BE IN INK

BE INKED IN THE PRESENCE OF A NOTARY PUBLIC OR A JUDGE OF STATE LAW TO SIGN
IF NOT INKED OR OTHERWISE DONE FALSE

1ST LIENHOLDER

07/07/2001 AMERICREDIT FINANCIAL SERVICES
PO BOX 9008
FORT WORTH, TX 76147-2008

1ST SIGNATURE AND DATE

DATE

BY

2ND SIGNATURE AND DATE

3RD SIGNATURE AND DATE

4TH SIGNATURE AND DATE

5TH SIGNATURE AND DATE

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7TH SIGNATURE AND DATE

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29TH SIGNATURE AND DATE

30TH SIGNATURE AND DATE

BE INKED IN THE PRESENCE OF A NOTARY PUBLIC OR A JUDGE OF STATE LAW TO SIGN
IF NOT INKED OR OTHERWISE DONE FALSE

RIGHTS OF SURVIVORSHIP AGREEMENT
I, THE PERSON WHOSE SIGNATURE APPEARS HEREON, HEREBY AGREE
THAT THE OWNERSHIP OF THE VEHICLE DESCRIBED ON THIS CERTIFICATE
SHALL FROM THIS DAY FORWARD BE HELD JOINTLY, AND IN THE
EVENT OF DEATH OF ANY OF THE PERSONS NAMED IN THE AGREEMENT,
OWNERSHIP OF THE VEHICLE SHALL VEST IN THE SURVIVOR.

30-C REV. 12/99

DO NOT ACCEPT TITLE SHOWING ERASURE, ALTERATION, OR MUTILATION

EXHIBIT

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